No. 80518-1

J.M. JOHNSON (concurring)—The United States Supreme Court has decided this case for us, while this court was agonizing for a year over the analysis. That Court issued its opinion in *Arizona v. Gant*, ___ U.S. ___, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009) on April 21, 2009, holding under the United States Constitution that a search of a vehicle violates the Fourth Amendment where the defendant is remotely restrained and no longer had access to the vehicle. In this case, the majority agreed on the relevant facts: "[Randall J.] Patton was taken into custody, handcuffed, and placed in the back of Deputy Converse's patrol car. The deputies then searched Patton's vehicle, where they found two baggies of methamphetamine and $122 cash under the driver's seat." Majority at 3.

Since the relevant facts are identical, the United States Supreme Court holding must be applied, inserting this defendant (Patton) for Gant.

Because [Patton] could not have accessed his car to retrieve

> weapons or evidence at the time of the search, . . . the search-incident-to-arrest exception to the Fourth Amendment's warrant requirement, as defined in *Chimel v. California*, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969), and applied to vehicle searches in *New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981), did not justify the search in this case.

Gant, 129 S. Ct. at 1714. It is beyond argument that the rulings of the United States Supreme Court are binding on this court through the supremacy clause. Thus, there should be nothing to this case save to affirm the trial court order to suppress the evidence. Instead, this court engages in pages of discussion of precedent of this court considering issues of Washington State Constitutional law, most of which were not raised by the defendant.

Separate analysis of our Washington Constitution may sometimes be necessary, but here we are not free to disregard the directly controlling United States Supreme Court decision. Even if we did so, prior rulings of this court do not authorize this search once it was factually established that Patton was remotely restrained. *State v. Johnson*, 128 Wn.2d 431, 909 P.2d 293 (1996), cited by the majority at 4, actually included a specific reference that resolved the Washington Constitutional arguments: "In *Stroud*, we said that a warrantless search of certain areas within a vehicle was not justified where . . . (2) there was little danger that the occupants could grab a weapon or destroy evidence located within the area. *See Stroud*, 106 Wn.2d at 152." *Id.* at 459 n.118 (Alexander,

J., concurring).

Conclusion

The United States Supreme Court decided this case in June 2009. The majority engages in extensive dicta unnecessary to the decision to suppress the evidence on that basis. Accordingly, I concur.

AUTHOR:
Justice James M. Johnson

WE CONCUR: